In The Supreme Court of the United States,

OCTOBER TERM, 1899.

No. 35.

The United States, Appellant.

vs.

Clarence P. Elder et al.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

This is a case for the confirmation of a Mexican grant situate in the County of Taos, known as the Cebolla grant. It is based upon a grant made by Governor Armijo, on December 31, 1845, to five grantees, one Carlos Santistevan, Jose Manuel Garcia, Julian Santistevan, Carlos Ortivas and Tomas Ortivas, described and bounded as follows: On the north by the limits of the Rio Colorado grant; on the south by the dividing line of the San Cristoval; on the east by the mountains; on the west by the edge of the bluff of the Rio del Norte, leaving the pasturage, roads and watering places free from the grant eastwardly from the place where they cannot irrigate.

The grant has been surveyed by the government as a preliminary survey, and it contained a little over 17,000 acres. The Court of Private Land Claims made a decree confirming the same, and fixed the boundaries so that that area will be very much reduced, probably cut down more than one-half. The United States attorney answered the petition for confirmation by alleging that he had no knowledge of the facts set out in the petition, and for aught he knew they might all be true, and simply asked proof of all

the allegations made. The original grant papers were produced from the Surveyor General's office, and were introduced in evidence *without any objection.* The grant had previously been presented to the Surveyor General on petition of the claimants thereof in 1872 for his decision and approval thereof and recommendation for confirmation. On an investigation thereof he found the same a good and valid grant, and recommended it for confirmation to Congress. The decree to that effect was introduced in evidence without objection.

The original grant, as introduced in evidence, will be found on pages 33, 34 and 35 of the record. The translation thereof on pages 36, 37 and 38. The decision of the Surveyor general on page 42, 43 and 44. The testimony taken before the Surveyor General of two witnesses, Augustin Duran and Juan Quintana, who were shown to have been dead, will be found on page 41, and the petition to the Surveyor General for his action thereon on pages 38, 39 and 40.

The evidence introduced in this case shows the grant was produced from the custody of the Surveyor General, and the evidence also shows that the parties were placed in possession of the land by Juan Lorenzo Martines, a justice of the peace of the precinct of Dolores in the district of Taos, on the 20th day of March, 1846.

The petition for the grant was made by Carlos Santistevan to the Governor, who stated that he asked for it for himself and in the name of five other associates, all residents of the town of Dolores, in the district of Taos. That they were without land in fee to cultivate for the support of themselves and their families, and that they had found this tract suitable for cultivation, irrigable from certain water said to be from the Lama, quite sufficient for its irrigation, and they requested that he should make to them a grant (donacion) of the said tract, because the same was of convenient size and had ample water to be cultivated and to afford sufficient support for the petitioners and their families, and would not injure any third party with respect to property or pasturage, or in any other way. The Governor (Armijo), on the 31st day of December, 1845, ac-

ceded to the petition and referred the same to the prefect of the district, that he might ascertain whether the land applied for had an owner, and that he should cause the corresponding justice to deliver the land referred to by the petitioner. This is signed by the Governor and by the secretary, Juan Bautista Vigil y Alarid. The appellant's attorney objects that this decree is not properly translated in the record, and furnishes another translation. Appellee insists that the translation in the record is much nearer correct than that proposed by the appellant. Probably a better translation than either would be made by inserting what is evidently intended and understood, as preceding the first word in the grant, the words "acceded to and referred," so that it will read, "Santa Fe, December 31, 1845. Acceded to and referred to the prefect of the district, in order that he ascertain if the land which is solicited has no owner. That he may cause the justice to whom it corresponds to give the possessions (meaning land), which the petitioner describes." The prefect referred it to the corresponding justice with instructions for him to ascertain if the land which was solicited was vacant, and whether there would be damage to any third party resulting from granting the same, and if none did result, he should proceed to grant the land to them sufficiently ample and abundant of what each could cultivate, with the understanding or condition that they should inclose it with a formal fence, in order to prevent damages, and that they should not obstruct the roads, pastures and watering places. The justice of the peace thereupon stated: "I meeting no impediment, proceeded to the tract, and finding the same uncultivated and unoccupied, took the petitioners by the hand, and leading them very slowly and in full legal form, in virtue of holding competent authority, etc.," he then placed the five parties before mentioned in possession of the land they prayed for, for cultivation in full legal form, and stated that they, at the instant they received their liberal donation and were favored in this manner, shouted with joy, saying huzza for the renowned sovereignty of the Mexican nation, and he directed them to inclose with a regular fence, so that they might not have

to claim dagames, and closed by saying: "And to the end that this grant may in all time exist, I authenticate the same under the authority conferred upon me, with my attending witnesses, for the lack of a notary public, there being none in this department; and it is done on this common paper, there being none of the proper stamp, the new settlers binding themselves to supply the same of the proper stamp whenever they can opportunely procure it."

The Court of Private Land Claims rendered its decision, pages 62 and 63, confirming the said grant. Appellant's attorney objects to the confirmation by the court.

1. Because "the departmental governor had no authority at the date of the grant to make the decree," and for argument simply refers the court to his brief in the case of Luis Ortiz et al. vs. The United States, No. 20. In that case, the same counsel who represents the appellee in this represented the appellee there, and his brief in that case is also referred to as containing his argument upon that point.

2. Appellant's counsel objects to the decree, because "even if the departmental governor had authority to make a grant the indorsement by Governor Armijo, on the muniment of title here presented, is not a grant." He first commences by stating that the indorsement is not properly translated, and then undertakes to give a translation of the indorsement or granting decree for the Governor, which is in no manner correct, not even as near correct as the one indorsement or granting decree of the Governor, which is in no manner correct, not even as nearly correct as the one contained in the record, because he undertakes to change the words "las poseciones" to "possession;" also, other changes. Possession, when referred to the act of taking control, occupying and managing land, is a word in a singular number and not plural, and is preceded by no article. In the grant here, the word is in the plural, and is preceded by the article "the," which is also in the plural, and can only be translated literally, "the possessions," but when translated in the connection in which it stands and the other words with which it has reference, it means *the lands*. It is followed by the words, "which the petitioner

describes," or, as it is translated in the record, "referred to by the petitioner." The words in Spanish translated "referred to by the petitioner," and which we say is better translated by "which the petitioner describes," are "que el petente espone." The only question to determine is whether the Governor meant by that grant to *"accede"* to the petition or the prayer of the petition, because the regulations of November 21, 1828, article 4, state: "The Governor will accede or not to such petition in exact conformity to the law." See regulations translated, Hornsby vs. United States (10 Wall., 231).

To ascertain what is meant by this decree, the petition must be taken into consideration to see what was asked, and what was acceded to. That petition does not ask for possession only, but it asks for direct grant of the land mentioned. Then we look forward to see what construction is placed upon that decree by the prefect and the justice of the peace, who had the execution of it, because the decree itself requires its execution, both by the prefect and by the justice of the peace, they being officers intrusted with its execution. The construction placed upon it by them must be given great weight in determining what is meant by it; that is, whether it is meant that the petition is acceded to, or something else was meant. It is a rule of law well established that the courts will defer to the political and judicial authorities of other countries in the administration and interpretation of their own laws. (Cavazos vs. Trevino, 35 Tex., 165, and authorities cited.)

Fremont vs. The United States, 17 How., 552, says:

"As the Governor deemed himself authorized under the circumstances to dispense with the usual plan, and his decision in this respect was sanctioned by the other officers intrusted with the execution of the law, it must be presumed that the power he exercised was lawful, and the want of the plan did not invalidate the grant."

If what they did could, by any construction whatever, be considered or adjudged, as done in accordance with the petition, then that construction must be given to it by this

court. The prefect directs the justice of the peace to ascertain if the land solicited is vacant, and if there would result from its being granted any damage to third parties. The only condition under the law of 1824 in regard to granting lands to citizens was that it should be vacant public land. There was no particular way in which the governor was required to make that appear. There is no reason why he could not accede to the prayers of the petition, provided the land was vacant. The petition itself recited that the land was vacant. The Governor acceded to the petition, evidently from the construction placed upon it by his subordinates, the prefect and justice of the peace. They certainly understood that he had done so, and the land had turned out to be vacant, and the grant was operative upon those conditions. In fact, the Governor's decree was a decree acceding to the petition, provided that the land was vacant, and its granting did no harm to any third person. That was not the district in which the Governor had his official residence, like the one in the Luis M. Ortiz case, so he was bound by whatever information might be given by his subordinates, and took their word for it. There was no particular form prescribed in which the Governor could accede to the petition, if what he did indicated that he acceded to the petition it was just as good as if he had made it in the form of a complete and perfect grant. In Arguello vs. The United States (18 How., 243) the court says: "By the fourth section the Governor, being thus informed, may 'accede or not' to the prayer of the petitioner. This was done in two ways—sometimes he expressed his consent by merely writing the word 'concedo' at the bottom of the expediente. At other times it was expressed with more formality, as in the present case, but it seldom specified the boundaries, extent or conditions of the grant. It is intended merely to show that the Governor has 'acceded' to the request of the applicant. * * * It is not itself such a document as is required by the eighth section, which directs that the definitive grant asked for be made a document signed by the governor shall be given to serve as a title to the parties interested."

Thus it will be seen that this court has decided that all

that is necessary in the Governor's decree is that it shall show that the Governor "acceded" to the petition, and we insist that that decree must be construed by his officers, who had to execute it, and that their construction must govern, it provided there is anything to show or anything that may be understood which would in any event justify that construction. We claim that the petition itself, which only asked for a grant, and gave reasons for it, and complied substantially with the law, is the first thing to be taken into consideration when construing that decree. Second, the order of the prefect, who directs that if the land is vacant and no damage will result to third parties, that the same should be given as described by the petitioner. Then the action of the alcalde also, in placing the party in possession, must be considered, because he treats it as a grant by the Governor when he says: "And in this joy they plucked up grass and cast stones as being lawful proprietors of the land, which they wished to irrigate with the water of the valley of the Lama, as relying upon that small water course, they had applied for the donation:" and at the end of his act of juridical possession he says: "And to the end that this grant may in all time exist, I authenticate the same under the authority conferred upon me, with my attending witnesses, etc."

These expressions by the justice of the peace, as well as those by the prefect, are constructions which they placed upon the decree of the Governor showing what they understood him to mean, and we claim that the decree of the Governor intended to "accede" to the prayer of the petition, and was, in fact, the act of acceding to the prayer of the petition, provided the prefect or justice of the peace should find that the land was vacant, and that no harm would be done to third parties. Can any other reasonable construction be placed upon this act. The United States attorney claims that he meant to simply refer the matter to the prefect in order to get a report. If that was so, why did he direct the prefect to cause the corresponding justice to give (or deliver) the land or the possessions which the petitioner described, or stated in the translation, "referred to by the petition," if he had not intended that as soon as that

fact was ascertained the decree should operate by way of acceding to the petition, then he should never have used those words. The prefect, following up that idea, says that the justice will investigate whether the tract applied for is vacant, and whether injury to any third party would result from granting thereof, and, none resulting, he proceeded to "grant" the land in abundance, etc.

The Supreme Court of the United States, in Fremont vs. The United States (17 How., 556), says: "It is proper to remark that the laws of these territories under which titles were claimed were never treated by the court as foreign laws, to be decided as a question of fact. It was always held that the court was bound judicially to notice them, as much so as the laws of the state or of the Union. In doing this, however, it was undoubtedly often necessary to inquire into *official customs, forms and usages.* They constitute what may be called the common or unwritten law of every civilized country."

In the brief of the counsel for appellees, in the case of Luis M. Ortiz vs. The United States, made by the same counsel in this brief, reference is made to quite a number of decrees of the Governor of New Mexico, in which, for the period extending over twenty years, he acceded to the prayers of the petitioning grants in nearly the same language used in this case, and all of those grants were acted upon favorably by the Surveyor General and by the Congress of the United States, and the decrees therein were deemed sufficient to show that the Governor had acceded to the prayers of the petition. The case of Arguello vs. The United States (18 How., 540) shows that the word in the regulations which Reynolds undertakes to translate "grant" is "accede," and not "grant," as appellant's counsel insists upon.

The attention of the court is directed to the fact that neither article 3 nor 4 of the regulations of 1828 are correctly translated in the appellant's brief, but that a correct translation of them is found in Rockwell's Mining Law and in the statement of the case in Hornsby vs. The United States, 10 Wall., ut supra.

It will be remembered by the court that it is a rule of

law that a construction placed upon laws and decrees of a foreign country by the officers of that country charged with the execution thereof is binding upon the officers of another country having to deal with the same. This is law laid down by this court, as well as the Supreme Court of Texas and various other courts, and does not seem to have been departed from.

Cavazos vs. Trevino, 35 Tex., 165.
Fremont vs. The United States, 17 How., 552.

II.

Appellants' counsel insists that a grant could not be legally made until there was a report. As there was no form particularly to be followed by the Governor, he could make the grant in the manner in which he liked; that is, he could accede to the petition in the manner which he thought best. He could provide that it should be operative if a certain state of facts existed, and authorized certain officers to ascertain that fact, and if it was found to be true by them, they could carry out the terms of the concession, or whatever was acceded to. It might be that the justice of the peace would finally become the arbitrator as to whether the grant or decree of the Governor acceding to the petition could take effect, but that was only upon one condition, and that is that he (the justice of the peace) found the land to be vacant, and that no injury would result to any third party.

Suppose Armijo had made an absolute grant, and at a subsequent time had found or believed that he ought to have inquired of the local officers as to the facts, as to the competency of the grantee or the fitness of the land to be granted, and had ordered a subsequent investigation, and it had been returned to him and he had thereupon made no change in the grant, it certainly would not have been held that such a grant was void. In this case he trusted to cer-

tain officers to ascertain a given fact, and said to them: "I accede to this request provided the land is vacant. You will ascertain if such is the case, and if so, carry out this concession by giving the land to the parties." Is there anything in that so inconsistent with the spirit and object of the laws of Mexico that it would render the Governor's decree void? Appellee's counsel believe that under the case of Hornsby vs. The United States (10 Wall., 232) the Governor had power to make the grant, and that having made it, or acceded to the petition, his grant conferred a title which should be confirmed; that is, it was not void, but it gave an equity which the parties entering into possession and acting upon it in good faith for fifty years, had the right to ask of this court its confirmation.

There is no pretext that the possession here given was either temporary or permissive solely. All such possessions as that which were given in California were done to enable the party to mark out his boundaries and prepare his map before making his application for the grant at all.

III.

The third point argued by appellant is: "Assuming this indorsement to be a grant, and to have been made under the colonization law of August 18, 1824, and the regulations of November 21, 1828, as contended for by claimant and as held by the court, this is not such a claim as the Court of Private Land Claims had authority to confirm."

The contention is that the grant not having been confirmed by the departmental assembly, it did not have a status such as this court was bound to recognize or confirm, so again we call attention to the case of Hornsby vs. The United States (10 Wall., 232), where this entire subject is fully discussed and decided.

It is also contended that the possession by the grantees is not proven as complete and perfect as it might have been. It was proven sufficiently complete to satisfy the land court,

who heard the evidence. But again we must insist that the grantees and their assigns cannot be held down to the most rigid and exact proof of such facts. As in the former brief, United States vs. Ortiz, we call attention to the fact that the government had been guilty of laches in withholding for half a century the organization of this court, so that parties could come in and make the proofs. There was a difference of forty years exactly between the time of the establishment of the California commission and the establishment of the land court. Witnesses who knew the facts had died. The grantees were all dead or moved away. The memory of people in a half century is liable to fail. Witnesses become so old they do not remember facts, or have not the physical condition to attend the court, or even strength enough physically or mentally to support an examination. Yet we claim in this case that we have shown ample and complete proof of possession by the grantees themselves. We have also shown possession of their assignee, and that the assignee had the land fenced; that the grantees lived upon it and cultivated it; and the assignee lived upon it and cultivated it. It is a principle that in looking back over a tract of land if you can show a given status of it at the particular time, such as that it was occupied and cultivated and had houses on it. That such creates a prima facie case. That it has always so existed from the time it was required to have existed, and the burden is then shifted to the other side to show a different state of affairs. In this case we have produced a witness who saw the grant delivered to the five parties He was very old, and did not seem to know much more. Probably his memory was so bad that he could not remember facts, or, more probably, owing to the exposed locality at that time, as is shown by the petition for the land and the requirement for the grantees to be armed. A witness living in that vicinity, such as this one, stayed very close to his own house, and did not look after what people in another settlement were doing. How many members of this court can tell now the amount of land which was in cultivation five or six miles from their residence fifty years ago? What houses were built on it; who lived there, or any other fact

or circumtance connected with the occupation of such land, except in a very vague or general way? One of these grantees, it is said, was alive at the time the case was tried. He was not brought to court because he was a non-resident, was too old and weak to travel, and had absolutely lost possession of his mental faculties, and was almost entirely blind and deaf besides. This fact was not introduced in evidence, because it was thought that the evidence was very full as to possession when the great lapse of time which had intervened was to be taken into consideration.

IV.

Appellant further insists this claim cannot be confirmed for the reason that there is no archive evidence of the same, and no record of the alleged grant in the archives derived from the former government. The record in this case shows that the grant was introduced both as to the original and translation, and that it came from the office of the Surveyor General. It is true that it was filed by claimants in the case when the matter was presented to the Surveyor General in 1872 for confirmation by him, but it is understood that it then came from the archives, which were in the Surveyor General's possession, and were simply filed with him as a paper in it, as evidence in that case. The paper having come from the proper custodian of the government, claimants were not compelled to introduce further testimony in regard to that fact. The burden was then thrown upon the government to prove that it did not belong to the archives. It is denied that when it was used on the trial of the case in 1872 before the Surveyor General that it came from private hands. Besides, there were no objections to the introduction of the grant, even if the contention of the appellant was true. The grant was admitted in evidence without any objection or intimation of an objection on any ground whatever (see page 4); and no objection was made during the whole trial for the want of sufficient proof to support said grant. No demurrer to the evidence, either orally or otherwise, was made, and no

motion was made to strike out the evidence as to the said grant, and attorney of appellee insists that it is too late, after an appeal has been taken and the case has been brought into this court, to raise objections which should have been raised in the court below, and which, if they had been raised, and had been held valid, might have been removed upon further evidence.

United States vs. Cambuston, 10 How., 65.
United States vs. Johnson, 1 Wall., 326.
United States vs. Auguisola, Ibid 352.
United States vs. Yorba, Ibid, 412.

Even if the proposition urged was tenable in this case the same has been overcome by the proof of possession. The evidence in this case shows the delivery of the possession by the justice of the peace, the entering into possession by the grantees residing upon the property, they and their assigns up to the present time, a period of fifty years, during which time there was no pretense that claimants were not the owners or that any other person claimed the title to the property; those in possession have remained undisturbed, continuous, open and notorious. It is insisted that a possession such as this, which is notice to the world, and when neither the government of Mexico nor of the United States have undertaken to dispose of it to other parties, but have stood by and recognized the rights of such possession, obviates the necessity of proof of archive evidence in case there is any failure in this case.

In Pico vs. The United States (2 Wall., 282 and 283), the court says: "When, therefore, a claim to land in California is asserted under an alleged grant from the Mexican government, reference must in the first instance be had to the archives of the country, embracing the period when the grant purports to have been made. If they furnish no information on the subject, a strong presumption naturally arises against the validity of the instrument produced, which can only be overcome, if at all, by the clearest proof of its genuineness, accompanied by open and continued possession of the premises. In this case the gen-

uineness of the grant is admitted in addition to its being clearly proven, both as to the genuineness of the signatures executing it, as well as to the possession which was given. One of the witnesses testifying that he was actually present when it was done."

See also United States vs. Alviso, 23 How., 319. Also United States vs. Polack, Hoffman's Land Cases, 297.

It is admitted in this case that the signatures of all the parties to the grant are genuine. There is no question about that. There is no question about the possession having been given and about the parties having entered upon and complied with the terms of the grant under the rule. In United States vs. Chaves (159 U. S., 455) an occupation of a property for that length of time presupposes a grant. In this case we have actually proven one, and certainly when we claim a grant which is actually proven and the possession thereunder adverse, notorious and continuous for half a century without any interruption, the necessary archive evidence will be presumed; certainly when it has been shown the archives of New Mexico have been lost and destroyed to a certain extent in regard to documents containing grants, and land titles, as was adjudicated by this court in United States vs. Chaves (159 U. S., 463).

As we have said before in another brief, the government not only waited until nearly all living witnesses were dead before authorizing the institution of these proceedings, but it so negligently cared for and kept the archives containing grants and documents affecting lands in the territory, that large numbers of them became lost and destroyed, and now we insist it is inequitable in the government, after having allowed a portion of the books and papers, as is shown by United States vs. Chaves, in 159 U. S., 463, to become lost or destroyed, to insist upon rigid proof, that the papers were filed, or ever in the archives, or that there was a record made of them, when there are none of the interested parties or officers living who are mentally capable of testifying to such facts. We insist that this document, having been pro-

duced from the Surveyor General, who is the custodian of the archives, that the burden of proof to show that such document never was in the archives, is thrown on the other side, but that if it is not, the proof of possession in good faith, the cultivation of the land, and the residing upon it, and claiming it by the grantees, their heirs and assigns, is sufficient to establish the grant, and sufficient to establish every essential which is necessary to make the grant valid, especially when we have produced from the public custodian of the archives the grant paper which has been introduced into evidence. Possession especially for so long a time will take the place of archive evidence.

V.

Appellant further contends that the confirmation of this grant is excessive, in that it is for the entire tract within the boundaries named by the alcalde, instead of only for the irrigable or cultivable lands within the boundaries, and in that the east boundary is fixed at the *summit* of the mountain instead of at the *foot*. This grant is not any part of it at the foot of the mountains. It extends, as we understand it, from near the foot of the mountain, along up the foothills and the side of a mountain to or near the summit of a mountain. The stream called the Rio del Lama is nothing but a mountain stream, which the proofs show rises in the mountain called the San Christoval mountain (testimony of Ezra Reading, page 9). So that there can be no question about the grant lying at the foot of the mountain, as that mountain extends clear down to the edge of the bluff on the Rio del Norte or Rio Grande, which is the same thing. The act of juridical possession gives the land on the east, the mountain, and after giving the western boundary as the edge of the bluff of the Rio del Norte, it then says: "Leaving the pastures, roads and watering places free eastwardly from where they cannot irrigate." So that the grant extended eastwardly up that stream

Lama as far as land could be irrigated from it. On cross-examination, on page 9, Ezra Reading was asked:

"Q. There is no land cultivated east of this road—this old trail? A. No, I believe not.

"Q. No land can be cultivated that is in the mountains east of that? A. Lots of it can be cultivated."

Then on page 9 he testifies that it is cultivated *above* the trail for a few hundred yards.

Ezra Reading's testimony on page 13 also shows that all the land running below the source of the stream Lama, which rises in the mountains, could be irrigated if there was water enough in the stream. That is to say, that is so situated that water can be carried out of the stream from its source or other places, so as to get it upon all of this land, although there is probably not enough to irrigate more than one-fourth of the area of the land. It will be observed that in giving possession of this land the prefect directed that the alcalde should "proceed to grant them of the land an abundance of what each can cultivate, etc." He was not directed to grant them as much as they could obtain water to irrigate. It was not supposed that all the lands granted for cultivation should be limited actually to the lands which a person might have water to irrigate, or that he might have capacity to cultivate at the time. In gixing those grants in New Mexico for settlement and for culivation they were always given with a view of enlarging the scope of the cultivation, as well as the scope of the settlements, and it was the policy of the Spanish government, as well as that of Mexico, to give the larger portion of the land for grazing purposes. The court will observe that by the law of 1824, which is the one under which this grant is made, section 12, it is provided: "No one person shall be allowed to obtain the ownership of more than one league square of five thousand varas of irrigable land. Four superficial ones of land dependent on the season, and six superficial ones for the purpose of rearing cattle."—Rockwell's Spanish and Mexican Law, page 452. See also De la Maza Codio de Colonization. In which last authority the law is printed in the Spanish language. This law shows the policy of the Mexican government in making grants to

distribute the kind of land out of the three kinds, estimating one-eleventh for irrigable lands; four-elevenths for lands which might be cultivated from rainfall (seasons), and six-elevenths for the purpose of grazing and stock raising. It will not be presumed that in making this grant the purpose was to deliver solely the land which was irrigable, or only so much of the irrigable land as there was water to irrigate, but the purpose was to give all the land which might be irrigated, along with the attendant portions which might be cultivated from the rains, and that which was necessary for stock raising and grazing. That is, if we take into consideration the policy of the law under which it was made. The letter of the law, however, never was followed in making these provisions. Tracts of land were granted customarily to the amount of eleven leagues, regardless of the portion of each kind of land, but it is very difficult to say when a stream rises very nearly to or at the top of a mountain and runs down to a river below, what portion of that land cannot be reached by water in a ditch. But the alcalde, in making this grant, while he was directed to "proceed to grant them of the land an abundance of what each can cultivate," decided that proposition himself. He was left as the judge of the amount which should be contained in the grant that should be made, and he granted the same, specifying the boundaries. "On the north the Rio Colorado grant; on the south the dividing line of San Christoval"; that is to say, the point where the northern boundary of the San Christoval grant reached; "on the west the edge of the bluff of the Rio del Norte, and on the east the mountain," specifying the leaving of the pastures, road and watering places free, eastwardly from where they cannot irrigate. This expressly provided that the grant should extend as far eastward as the land could be irrigated. The proof is that the Lama stream had its source high up in the mountain very near to or at the divide, and that water for irrigation could be taken out directly at its source and carried over the land, so that all of the land from the source of that stream downward could be irrigated. The amount *above* the source of the stream in all probability would not reach a hundred acres. It would be

barren land, unfit for any use, and almost up to the timber line. At that point, the two ridges on the opposite side of the Lama stream, at the top of which the court has fixed the northern and southern boundaries, following the meanderings of the stream, come together, i. e., at the top of the mountain, possibly a mile or two above the source of the river, and at the source of the river they are very close together, probably only two or three or four hundred yards apart. The attorney for the appellant argues that as the alcalde required the party to fence his land, that he could never have meant to give the whole tract, as it would entail an extraordinary expense. No one in reading that grant would understand that all of the grazing lands and temporal (season) lands, when they were not cultivated, should be fenced in. The requirement to fence in the lands was without doubt to mean and to apply to those lands only which should be actually planted and crops produced on them. The alcalde says the fence shall be placed there so that they shall not have to claim damages. The laws of Mexico were very rigid about damages committed on growing crops by loose animals. This was somewhat of a remote settlement, a place where the people of Colorado and the people of San Cristoval allowed their animals to range without being under herd, so that they provided that the lands should be fenced so far as they were cultivated, we contend, so as to avoid damage to those crops. This court must take judicial notice of the laws, regulations and customs prevailing in New Mexico in regard to all matters connected with private land claims. But this contention which we make is borne out by the order of the prefect, who also says: "They shall inclose the same with a regular fence in order to prevent damages, and that they do not obstruct the roads, pastures and watering places." As a direct provision guarding against placing fences which would obstruct the roads, pasturages and watering places. They shall allow the watering places to be open for all animals to reach them. They should not only keep the pastures of this land unobstructed for the benefit of their own stock solely, but the customs which prevailed in the country of never fencing up grazing lands, but for every per-

son's stock to run at large and go over on his neighbor's grazing land required them to leave it unobstructed for all such use, in addition.

The justice of the peace did not pretend to distribute land to each one of the individuals, but he gave it to them all as a whole, supposing without doubt that they would divide the land which they wished to irrigate between themselves, and when so divided each one would fence his irrigated lands so that the stock of his neighbor would not interfere with it.

It cannot be said that those parties did not desire to irrigate every particle of land which might have been reached by water in a ditch, although the justice of the peace says, as stated, that they plucked up grass and cast stones, as being lawful proprietors of the land which they wished to irrigate with the water of the valley of the Lama; as relying upon that small source, they had applied for the donation. This last paragraph says that, "relying upon the small source of water in the Lama, they applied for the donation." Then the justice of the peace says: "I therefore designate to them for limits"; then he gives the boundaries showing that the limits of the possessions and ownership of those parties were to be prescribed by the actual limits designated by him. It is true the Lama was only adequate for the cultivation of a portion of this property, but they expected to live there as settlers and colonists, and the law allowed them temporal lands, and also lands for grazing. Naturally they were expected to own live stock. The alcalde only provided that the pastures, roads and watering places should be left free to the east of where it was not *possible to irrigate*. If it was *possible* to *irrigate* any place, then that land was not left free, but you must go the eastward of it to get the land which was free, and the proofs have shown that it might be irrigated clear to the source of the river, which is practically at the top of the mountain.

It is claimed that the land near the top of the mountain would be exceedingly valuable for mineral. Nobody has yet discovered that fact, but possibly it may be true; but if it be true, the government of the United States, in estab-

lishing this court, expressly reserved the precious metals from the operation of the act.

The Court of Private Land Claims, in the case which came before it expressly on the point as to where was the point of boundary when a natural object, such as a mountain, a stream or a hill, was called for, distinctly held that in the case of a mountain it went to the *top* of the mountain, and that was in the case of the Helena Gallegos grant, decided December 6, 1893, by the Court of Private Land Claims, in which the following language was used:

"The boundaries described in the act of possession (in the English translation filed) are as follows: 'On the [north] a small ruin, and on the south some lagoons which are contiguous to the walls of Jorge, on the east the Sandia mountain and on the west the Rio del Norte.'

"It is contended by counsel for claimants that under this description, and the claim, use and possession of the occupants, the eastern boundary line should go to the summit of the Sandia mountain, while the attorney for the United States insists that it stop at the foot of the mountain.

"The distance between the top and the bottom of a mountain or hill is often considerable, and the character of the land on the slope may generally be taken to furnish in itself a motive for the descriptive words as well as a reason and guide for interpretation of meaning. In all this region of country, with its peculiar physical and climatic conditions, 'wood, water and grass' are the most desirable and requisite qualities of a rancho or land grant. That mountains from the snow which lodges upon their summits furnish water, timber and more abundant and nutritious grasses upon their slopes than are to be found on the plains below, and, often, the only water, timber and grass to be had, is a fact so notorious as to compel judicial cognizance. Hence, if there were no other reason, it is believed that this physical and natural one might well be regarded as sufficient for the conclusion that the petitioners, upon praying for the grant, meant and expected that the boundary should include the adjoining side of the mountain to the summit, and that the claim and user by the occupants of such area for the wood, stone, water and grass for pasturage should,

in the absence of certain proof to the contrary, determine such boundary description to mean the summit of such natural object designated.

"An authoritative rule of construction is, that, where a deed is uncertain or ambiguous in description, the construction given to it by the parties themselves, as shown by acts and declarations, is to be deemed the true one, unless the contrary is clearly established. Reid vs. Proprietors, 8 How., 274.

"And when boundaries are doubtful, actual occupation for a number of years up to the line where the party supposes his boundary to extend, without objection from the adjoining proprietor, is strong presumptive proof of the true place of the line. 21 Am. Decisions, 680.

"But a proper interpretation of the descriptive words themselves is sufficient to fix the summit of the mountain as the correct definition of the terms employed. There would be insuperable difficulty in determining the exact point of the foot or bottom of a mountain or hill sloping gradually away from its summit for many miles before reaching a level, or determinable point, where it could be said that the mountain ended though the slope did not.

"But there is no difficulty in ascertaining where the top of a hill or mountain is. That point can always and easily be made certain and definite.

"Upon the point of interpretation where the term mountain is used alone and unqualified, we are not unsupported by apt judicial decision.

"In the Supreme Court of California, in the case of Ornbaum vs. his creditors, 61 California, 459, the words of boundary decription, 'on the south by what is known as Redwood mountains,' were objected to as indefinite, and the court in holding the description to be good, said: 'It would be a novel proposition of law in this state that a mountain or range of mountains is not a definite boundary of land. It is as much so as a tree, a rock or a stream a half mile wide, in which the boundary would go ad medium filum aquæ. The boundaries usually go to the middle of the natural object named, except in the case of a range of mountains, when it goes to the comb or dividing line of the ridge.'

"This construction must be approved as the most rational one in all such cases.

"In the case under consideration the precise meaning of the words gives even less room for doubt. The English translation on file, viz: 'On the east the Sandia mountain,' is deficient and inadequate.

"The Spanish words in the original text of the archive document are, 'por el oriente con la sierra de Sandia,' a proper translation of which, into requisite English is: 'On the east by the crest of Sandia' mountain. The primary meaning of the word 'sierra' is a saw.

"As applied to mountains its figurative, general meaning is a range; as 'La Sierra Madre,' 'La Sierra Nevada,' the Mother range and the Snowy range of the Rocky mountains. In a special application of the term to a single mountain, or moutnains not properly constituting a range, the word sierra especially refers to and denotes the serrated crest, comb, ridge or summit. The term may be applied in common parlance, to entire mountains, smoothly roundde, as to those with rugged ridges, but when employed in relation to a boundary point or line, there can be no room for doubt that the 'cumbres,' apex or summit is intended as the true and precise definition of the land mark."

Also in the Supreme Court of California, in Ornbaum vs. his creditors, the court says: "It would be a novel proposition of law in this state, that a mountain or range of mountains, is not a definite boundary of land. It is as much so, as a tree, a rock, or a stream one half mile wide, in which the boundary would go *ad medium filum acquae*" The boundary usually goes to the middls of the natural object named, except in the case of a range of mountains, when it goes to the dividing line of the ridge. A deed is also construed *ut res magis valeat quam pereat*. This rule applies to a declaration. There was a dissenting opinion in that case, but he did not dissent on that ground. Four able judges concurred in the opinion and evidently the remaining judge concurred in that finding, as he did not express any dissent on it.

What other construction could be placed upon a boundary call when a grant of land was located on a side of the

slope of a mountain and did not extend down actually to the foot of the mountain, and simply occupied the land on both sides of the stream as far up as the land was possible to be irrigated, and the testimony hows that the source of the stream is very close to the top of the mountain and that from the source it was possible to irrigate the land all the way down? We insist that this is a showing of the proof, and instead of the alcalde, or rather the court in this case, giving more land than was granted, it has actually drawn in the boundaries on the north and south so as not to give more than one-half, or even less than one-half than the amount which should have been given.

The attorney for appellants seems to think that the Supreme Court of California did not understand their business or the customs, rules and regulations in that state in regard to the location of a boundary when a mountain was called for by a boundary. The situation in California and New Mexico was practically the same. To a very great extent, the country in each one of those jurisdictions is cut up by mountains and valleys, outside of the Rio Grande valley from about opposite Santa Fe south, and a portion of the lower valley of the Pecos river, none of the valley in New Mexico have any considerable breadth. Most of the grants which were made in New Mexico of land, were made on mountain streams; generally rising near the top of the mountain and flowing down into some of the larger waters, like it is in the case in question. It is a tract of land entirely on the western slope of the mountain, and if its eastern boundary is to be measured by the foot of the mountain, or the bottom of the foot hills which is the foot of the mountain, it would throw it to the westward of the western boundary, which is the edge of the bluff overlooking the Rio Grande, while the foot of the mountain would really be the bottom of that bluff very nearly to the edge of the river.

In United States vs. Pico, 5 Wall., 536, this court says: "Where a doubt arises upon a meaning of the grant, as to the quantity ceded reference may be had to the juridical possession delivered to the grantee. This proceeding involved an ascertainment and settlement of the boundaries

of the land granted by the appropriate officers of the government specially designated for that purpose and had all the force and efficiency of a judicial determination. It bound the former goverment and is equally binding upon the officers of our government." To the same effect is the case of Graham vs. the United States 4 Wall., 260.

Appellant's counsel have cited several decisions of the Secretary of the Interior and of the Land Office, but such decisions are in no manner controlling, or even as advisory. Those decisions are only good when the Land Department has the control of a given survey and locates the natural objects. They are not in any manner as precedents for a court of record.

T. B. CATRON,
Attorney for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 35.

THE UNITED STATES, APPELLANT,

vs.

CLARENCE P. ELDER ET AL.

ADDITIONAL POINTS AND AUTHORITIES FOR APPELLEE.

The first proposition submitted by the appellant in his brief is that "*Under the colonization laws of Mexico, in force at the date of the grant, the governor of New Mexico had no power or authority to make the grant, or initiate proceedings for that purpose, and that the grant was void for that reason.*"

It is contended by appellant that the Territory of New Mexico as a Mexican territory ceased to exist in 1837, and that New Mexico was made a department; that political chiefs were abolished and governors created; that territorial deputations were done away with and departmental juntas took their place.

It is true that in form this was done, but it was a change

in name and not in substance. The Territory remained under the name of the department with its same limits. A governor took the place of a political chief, with the duties imposed upon him to execute and carry out the laws. The departmental junta had the same duties and powers conferred upon it as existed in the territorial deputation, possibly more.

This question, however, has been adjudicated time and time again. There is nothing in the act creating the Court of Private Land Claims which in any manner affects the Territory of New Mexico in regard to this point differently from what it did in California. There was no special legislation in Mexico for either one of the Territories. The Supre ne Court of the United States has repeatedly construed the Mexican act of August 18, 1824, and the regulations of November 21, 1828, in considering the validity of grants made subsequent to 1837, the time of the alleged change, and have uniformly construed that those acts were in force and regulated the mode and manner and power to make grants of the public lands in the Republic of Mexico; and in a case taken from New Mexico (United States *vs.* Vigil, 13 Wall., 450), which was in reference to a grant made in the year 1845, while said grant was rejected by the Supreme Court, still it was *held that the law of August 18, 1824, and the regulations of November 21, 1828, were in force, and were the only laws in force regulating the making of grants.* This decision was with regard to the law which was in force in New Mexico in 1845, and the courts say:

"It has been repeatedly decided by this court that the only laws in force in the Territory of New Mexico for the disposition of public lands, with the exception of those relating to missions and towns, are the acts of the Mexican congress of 1824 and the regulations of 1828."

United States *vs.* Osio, 23 How., 275 *et seq.*
United States *vs.* Cambuston, 20 How., 60 *et seq.*
This case being founded on a grant made in 1846.
United States *vs.* Reading, 18 How., 3, 7.
Hornsby *vs.* The United States, 10 Wall., 236.

In the case of Hornsby *vs.* The United States, *ut supra*, the court say:

"That the governor under Mexico was authorized to make grants of land in the *department of California is not questioned*, and that the instrument produced in this case is genuine and was issued by him, is admitted, etc."

The case of The United States *vs.* Reading, *ut supra*, contains quite a lengthy discussion on page 7 in regard to that law and regulation, to which the attention of the court is respectfully invited.

See also—

United States *vs.* Vallejo, 1 Black, 541.
United States *vs.* Workman, 1 Wall., 761.

In this last case the court says:

"*Ample authority was conferred* upon the governor of California to grant vacant lands belonging to the supreme government. *Such authority was derived from the colonization law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, as has been affirmed by repeated decisions of this court.*"

The grant in this case was made in 1846. It was held not valid because it was a disposal of mission lands and *not vacant public lands.* This case expressly calls attention to a statement in the act of June 12, 1843, and the new constitution then adopted (page 451), showing that the matter was entirely before the court.

In United States *vs.* Vallejo, 1 Black, 552, there were two grants under considerations, one as a colonization grant, dated March 15, 1842, the other the 19th of June, 1844. This court, speaking of that regulation, on page 552 says:

"The above are the only laws of the Mexican congress passed on the subject of granting the public lands, with the exception of those relating to the missions and towns, which have no bearing on the question. None others have been

produced in the argument, nor have our researches found any, nor were any others discovered by the public agents which were authorized by this Government to inquire particularly into the subject."

United States *vs.* Sutter, 21 How., 177—This grant was made about the year 1838.

The attorney of the United States contends that by virtue of the law of April 4, 1837, which provided that "the Government, in concurrence with the council, shall proceed to make effective the colonization of the lands that are or should be the property of the Republic by sales, leases, or mortgages," etc., repealed the colonization law of August 18, 1824, and November 21, 1828. There is a provision at the end of that law which says:

"Not being embarrassed by the laws heretofore enacted on colonization, whose provisions are repealed in so far as they conflict with the present, re-enacting, however, the prohibition of article 11 of the law of April 6, 1830."

Article 2 of the law of April 6, 1830, provides:

"In the exercise of the power which the general congress reserves to itself, in article 7 of the law of the 18th of August, 1824, it is forbidden to colonize foreigners of adjacent countries in those States and Territories of the federation which adjoins their nations."

Section 7 of the law of August 18, 1824, provides:

"Prior to the year 1840 the general congress shall not prohibit the entry of foreigners to colonize unless imperious circumstances force it to it with respect to the individuals of some particular nation."

It will thus be seen that the law of April 4, 1837, simply provides an additional mode of colonization—that is to say, it provides that the General Government may act concurrently in the matter of colonization, for the purposes

and subject to the limitations provided in that act—that is, the Government, independent of what the governors of the Territories might do, may sell, lease, and mortgage the lands, applying the income therefrom to the funding of the national debt contracted or to be contracted. There is nothing in conflict with the colonization laws of 1824 in this act. Whichever one of those authorities should act first upon a given piece of property would supersede the other as to that property. If it had been the intention of the Mexican congress to repeal the colonization laws of 1824 and the regulations of 1828 absolutely, as contended by the Government, why did it not say so? Certainly by saying that they were only repealed in so far as they conflicted with that act is an implication that they were not repealed in toto, but that something remained under those acts. If anything remained, what was it? If it takes away from the governor the power to make grants, then those acts are as completely dead as an individual who may be decapitated. None of the powers following the right to make the grant by the granting authority could exist without the exercise of that authority. If the power was left in the governor to make the grant, which must have been so, or the whole act was repealed, and the words in the act of 1837 would be useless, and every other provision would remain to carry out the terms of those grants which could be made. Evidently what was meant by repealing the colonization laws so far as they conflicted with the act of 1837 was to estop the governors from acting upon those lands where the Federal Government might have initiated proceedings to sell, mortgage, or lease. This construction is further carried out by the provision at the end of the section continuing in force the prohibition contained in article 11 of the law of April 6, 1830, which referred to article 7 of the law of 1824. If by the provision of the law of April 4, 1837, the whole colonization laws were repealed, then why did that section say that "in the exercise of the power

which the general congress reserved to itself in article 7 of the law of the 18th of August, 1824, it is forbidden to colonize foreigners of adjacent countries, etc.?" If the whole law was repealed, section 7 would have gone down with it, and that prohibition was unnecessary. On the contrary, it would seem that the Mexican congress, when it enacted the law of April 4, 1837, rather supposed they might repeal section 11 of the act of April 6, 1830, and thereby leave in force section 7 of the act of 1824. Certainly there is no intent or purpose shown by the law of April 4, 1837, to annul the previous colonization laws, and by continuing in force section 11 of the law of 1830 they refer directly to the act of 1824, and show that that was in their consideration at the time, and it was not their intention to repeal the whole law, but only so far as it might conflict with the act of 1827. If both those acts can stand together, there being no direct repeal of the first act, the court must construe them so that they will both be in force, and only the act of 1824 gives way whenever there is a direct conflict in some respects to that of 1837, and it is impossible to see how the latter act repeals the former one in toto, or any part of it which would prevent the governor from making a grant, because that is the soul of the act, and if it is destroyed, all must go.

The appellants also cite with confidence a paragraph in the opinion of the court in The United States *vs.* Coe, 170 U. S., 696, wherein Associate Justice McKenna, in delivering the opinion of a majority of the court, uses this language:

"Between the date of the law and the grant in this case no regulations to be observed in carrying out colonization were established. On the contrary, by a law passed April 4, 1837, all colonization laws were certainly modified and may be repealed."

The law was then copied in full in the opinion, and no further comment is passed on it. Justice McKenna does not say that the law was repealed, but only modified. It will be noticed that that was a decision wherein four of the justices of this court absolutely dissented, leaving a majority of only one to support the decision of opinion, and it will also be noticed that Justice Gray only concurred in the result. What may have been his differences with the majority of the court is not known. It is hardly to be presumed, however, that when he concurred in the result only that he went to the extent of saying that the large number of decisions of this court heretofore rendered holding that the law of 1824 and the regulations of 1828 were in force up to the 7th of July, 1846, in California, and necessarily up to the 18th of August, 1846, in New Mexico, were bad law.

It is further suggested to the court by the argument that when there has been such a long and unbroken line of decisions by the highest court in this country in reference to the title to real estate in the Mexican territories acquired by our country, and under which large numbers of our citizens have invested their money upon the faith of those decisions being a rule of property, amounting to millions and possibly billions of dollars, certainly running into the millions in New Mexico, that this court will undertake to destroy this rule of property and cause those people who have invested their moneys on the faith of those decisions in grants which are unconfirmed to lose their investments and their property, and to lose confidence in the ability of this court to enunciate a principle of law or construe a law in such manner that on the faith of the construction they can safely invest their means. It is hard to believe that this court will do so, and counsel for appellant does not believe that at this late day those decisions under which possibly a billion dollars' worth of property is now held will be overturned and a rule of property destroyed, and that the remainder of the unconfirmed grants, which are few in com-

parison with the confirmed, will be held for naught and the investors in them be deprived of their investments, made on the strength of this court's decisions, and the rule of property established by it (Palmer *vs.* U. S., 24 How., 125).

The law of April 4, 1837, being passed subsequent to the constitution of 1836, which is claimed by appellant's counsel, abrogated the offices of political chief, territorial deputations, and the Territories themselves, certainly would be construed into a re-enactment of all the law of 1824 and the regulations, so far as they do not conflict with the law of 1837. The effect of that act is that they remain in force, except so far as they conflict with the act of 1837, and except so far as they abrogate the enforcement of the seventh section of the act of 1824 by construing the act of 1830, section 11. This construction certainly does not need authority for this court to sustain it.

Besides, the congress of Mexico, which is supposed to have known which laws were in force in Mexico, by a law enacted December 4, 1846, provided, article 53:

"The colonization of the frontiers shall not be done, without the express approval of the government, nearer than twenty leagues of the international boundaries or ten leagues of the seashore, in conformity with article 4 of the law of August 18, 1824."

Here is a direct recognition of the existence of that law of 1824, done before any treaty was made and while New Mexico was regarded by them as a part of their territory.

The law of March 20, 1837, enacted under the constitution of 1836, provides, in section 3, subdivision 3, as follows in regard to the duties of the governors:

"To comply with and cause to be complied with, the laws and decrees of Congress, etc."

In the fourth subdivision also:

"To also comply with and cause to be complied with the decrees and orders of the General Government."

In section 2 of that act it says:

"In each department there shall be a governor appointed by the President of the Republic upon the nomination of three persons by the respective departmental council (junta) without the obligation of being governed thereby in the frontier departments, etc."

The remainder of the sentence as translated is unintelligible, but is not important for this discussion.

By subdivisions 3 and 4 of section 3 it is made the duty of the governor to comply with and to cause the laws and decrees of the Congress and of the General Government to be complied with. That certainly embraced every existing law and decree and every one that might be enacted, and it seems that by section 2, in the frontier departments to which New Mexico belongs, he was given supreme power, although he was given a departmental council, he was under no obligation to be governed by it. If anything can be said in regard to this constitution and the laws passed under it to carry it out, affecting the title to grants of the public lands in the frontier department such as New Mexico, it would seem that the action of the governor in complying with the laws was supreme; that he could act entirely in those matters of grants himself; that as he was not bound by the departmental council or junta, his acts would be just as valid without them as with them, so that a grant in that view would become definitely valid as soon as the governor made it.

We contend, however, that this court has repeatedly and consistently held and decided that the law of 1824 and regulations of 1828 are in force or were in 1846, and that they were the only laws and regulations then in force. We think, however, that upon the consideration of the argument for the United States, if we are to admit that the constitution and the laws passed under it of 1836 and subsequent thereto did affect the power of the governor to grant

lands, then that power was enlarged and made much more extensive.

Also by the constitution of June 13, 1843, art. 140, 4 Dublan & Lozano's Laws, 443:

"The duties of the governors of the departments are:
* * *

2. "To publish the laws and decrees of the national congress, and the decrees of the President of the Republic, not later than the third day after their receipt, and shall cause them to be enforced within the territory where he exercises his functions."

This also made it his duty to execute the laws and decrees of congress and the president. The law of August 18, 1824, and the regulations of November 21, 1828, were only abrogated so far as they conflicted with the law of April 4, 1837, which only provided an additional step to colonization or disposal of the public lands.

Do not these two constitutions simply provide an officer to execute and enforce the laws of the Republic, merely giving the name of "governor" instead of "political chief," and expressly conferring on him full power to enforce the law? If the law could only be enforced after November 21, 1828, by a grant to be made by the "political chief," then when the "governor" took his place with the duty unimposed of enforcing the law, did he not succeed to all the powers of the political chief, so as to be able to execute the law, which required the affirmative act of the political chief or governor to enforce it?

No power except in the terms of the constitution of June 13, 1843, article 140, and article 3, sections 3 and 4, of the law of March 20, 1837, under the constitution of 1836, was conferred upon the governors, but this was enough. No special authority was required; he was given it in all cases and for all purposes.

Article 16 of the law of August 18, 1824, provides:

"The Government in conformity to the principles established in this law shall proceed to the colonization of the Territories of the Republic."

Under this the Government issued the regulations of November 21, 1828, which became the law applicable to the Territories. When the States were abolished and the Government became central, that certainly cut off the power of the States to dispose of the public land under their laws. The internal legislation and regulations adopted by them were incompatible with a centralized government.

But the law and regulations for the Territories were those of the General Government. The Territories had nothing to do with making them. Did they not continue in force if there was machinery to enforce them? Was not the machinery provided when it was made the duty of the governor to cause the laws to be enforced?

Assertion has been made on page 12 of the supplemental brief of appellant that alcaldes, prefects, town councils, departmental assemblies, and other officials indulged in the practice of disposing of the public lands in the department gratuitously and without restriction, yet it appears they did so without authority.

This is certainly a gratuitous statement. Prefects, alcaldes, and town councils had the right to dispose of, partition, and grant the common lands of any municipality in their jurisdiction, and it may confidently be asserted that such practices as are charged cannot be found to have existed outside of any organized municipal body except in two or three instances at the most, and in those the acts were disapproved by the governor or superior officer, and the citation of a certificate made by Tipton in the Chaves case does not show such to be the case. Such statements can only be made to excite prejudice in the minds of mem-

bers of this court against the administration of the land laws under Mexico; but we confidently assert that the execution of those laws was very jealously guarded by the authorities, and usurpation of authority in such matters was promptly rebuked and the acts nullified in every instance.

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